

**FILED**

UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

AO 243 (Rev. 09/17)

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT JUN 01 2021  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

<b>United States District Court</b>	District of New Mexico	<b>MITCHELL R. ELFERS</b> <b>CLERK</b>
Name (under which you were convicted): <b>MICHAEL JAMES NISSEN</b>	Docket or Case No.: <b>1:19-CR-00077-JB</b>	
Place of Confinement: <b>CORE CIVIC CORRECTIONS CENTER</b>	Prisoner No.: <b>02508151</b>	
UNITED STATES OF AMERICA	Movant (include name under which convicted) v. <b>MICHAEL JAMES NISSEN</b>	

**MOTION**

1. (a) Name and location of court which entered the judgment of conviction you are challenging:  
**United States District Court for the District of New Mexico  
333 Lomas Boulevard, Northwest  
ALBUQUERQUE, NEW MEXICO 87102**
- (b) Criminal docket or case number (if you know): **1:19-CR-00077-JB**
2. (a) Date of the judgment of conviction (if you know): \_\_\_\_\_  
(b) Date of sentencing: **06/18/2021**
3. Length of sentence: **N/A**
4. Nature of crime (all counts): **18 U.S.C. § 875(c)**  
**convicted on two counts of 18 U.S.C. § 875(c)**
5. (a) What was your plea? (Check one)
 

(1) Not guilty <input checked="" type="checkbox"/>	(2) Guilty <input type="checkbox"/>	(3) Nolo contendere (no contest) <input type="checkbox"/>
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6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?  
  
**N/A**

6. If you went to trial, what kind of trial did you have? (Check one)      Jury       Judge only
7. Did you testify at a pretrial hearing, trial, or post-trial hearing?      Yes       No

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8. Did you appeal from the judgment of conviction? Yes  No

9. If you did appeal, answer the following:

(a) Name of court: N/A

(b) Docket or case number (if you know): N/A

(c) Result: N/A

(d) Date of result (if you know): N/A

(e) Citation to the case (if you know): N/A

(f) Grounds raised:

N/A

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes  No

If "Yes," answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

(5) Grounds raised:

N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes  No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: United States District Court for the District of New Mexico

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

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- (4) Nature of the proceeding: vacate void judgment  
 (5) Grounds raised:

## Constitutional Doctrine Violations

- (6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes  No

(7) Result: N/A

(8) Date of result (if you know): N/A

- (b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket of case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised:

N/A

- (6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes  No

(7) Result: N/A

(8) Date of result (if you know): N/A

- (c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes  No

(2) Second petition: Yes  No

- (d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

*First petition was only filed, but movant did not proceed any further as record of the court will show.*

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Being Denied Due Process of Law and Equal Protection Clauses of the Constitution.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): i michael james nissen, private living man in private capacity have appeared in written petition before the administrative agency for a requested adjudicative hearing and declaratory order to determine if michael james nissen, private living man am subject to the statute/code for which i was convicted on, all affidavits, declarations, notices, and a copy of letter sent to the united states attorney general via certified mail by core civic corrections center concerning this matter were all filed into the record of the court in the month of may, 2021, michael james nissen is being denied due process by the administrative agency for a requested adjudicative hearing and declaratory order determining in writing that michael james nissen is subject to the code, this illegal conviction and soon to be entered judgement is null and void for being denied due process and equal protection clauses of the constitution, i michael james nissen am petitioning this federal judicial court concerning this matter of which must be vacated and void judgement for lack of subject matter jurisdiction for being

(b) Direct Appeal of Ground One: denied due process of law.

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

- (2) If you did not raise this issue in your direct appeal, explain why: I Michael James Nissen private living man have not appealed from the judgement of conviction.

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: 28 U.S.C. § 2255

Name and location of the court where the motion or petition was filed:

United States District Court 333 Lomas Boulevard, N.W. ALBUQUERQUE, NM

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

- (3) Did you receive a hearing on your motion, petition, or application?

Yes  No

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(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

No appeal, for i michael james nissen only filed 28 u.s.c. #2255 and did not proceed any further with filed 28 u.s.c. #2255

**GROUND TWO:** N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

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(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

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**GROUND THREE:**

N/A

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- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

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**(b) Direct Appeal of Ground Three:**

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

- (2) If you did not raise this issue in your direct appeal, explain why:

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**(c) Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

- 
- (3) Did you receive a hearing on your motion, petition, or application?

Yes  No

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No

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(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND FOUR:**

*N/A*

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

*N/A*

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(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

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(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If you answer to Question (c)(1) is "Yes," state:

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Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: \_\_\_\_\_

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

Kenneth Gleria, Jack McHitarian

(b) At the arraignment and plea:

Melissa Morris

(c) At the trial:

Kenneth Gleria, Jack McHitarian

(d) At sentencing:

Joe Romero

(e) On appeal:

N/A

(f) In any post-conviction proceeding:

Susan Porter, Joe Romero

(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A

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16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes  No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes  No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes  No

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18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

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\* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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Therefore, movant asks that the Court grant the following relief:

vacate void judgement for being denied due process  
or any other relief to which movant may be entitled.  
of law.

N/A

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 05/26/2021.  
\_\_\_\_\_  
(month, date, year)

Executed (signed) on 05/25/2021 (date)

by: Michael James Thin  
\_\_\_\_\_  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Nicola Michael  
02503151  
C.C.C.  
Post office box 3540  
Albuquerque, New Mexico



RECEIVED

UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

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101 South Woodward, Northwest  
Albuquerque, New Mexico

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